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IN THE
COURT OF APPEALS OF INDIANA

THOMAS C. ROGERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A01-0608-CR-356
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Sally A. Blankenship, Judge
Cause No. 15D02-0603-CM-154

April 13, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Thomas C. Rogers (Rogers), appeals his conviction for operating a vehicle while intoxicated endangering a person, a Class A misdemeanor, Ind. Code § 9-30-5-2(b).

We affirm.

ISSUE

Rogers raises one issue on appeal, which we restate as follows: Whether the evidence was sufficient to sustain Roger's conviction.

FACTS AND PROCEDURAL HISTORY

On March 17, 2006, at approximately 11:00 p.m., Officer William Brunner (Officer Brunner) of the Lawrenceburg Police Department was traveling eastbound on U.S. Route 50. He observed a Volkswagen traveling westbound at a high rate of speed and clocked the vehicle going sixty-one miles per hour. The speed limit in the area is forty-five miles per hour. Officer Brunner turned around and followed the Volkswagen. After seeing the Volkswagen weave out of his lane twice, he decided to affect a traffic stop. Officer Brunner activated his lights and the Volkswagen pulled to the side of the road.

Approaching the Volkswagen, Officer Brunner noticed there were two people in the vehicle. Upon speaking with the driver, later determined to be Rogers, Officer Brunner smelled alcohol and noticed what looked like two open beer cans in between the passenger's legs. Officer Brunner asked Rogers to exit the vehicle. As Rogers got out of the vehicle and walked to the rear, he seemed a bit "wobbly" and "unsteady on his feet."

(Transcript p. 28). Rogers replied affirmatively when asked if he had been drinking. As Officer Brunner continued to speak with Rogers he noticed a very strong odor of alcohol coming from Rogers; also that his eyes were red and his speech was slow and slurred. At that point, Officer Brunner asked Rogers to perform some field sobriety tests. Rogers agreed.

The standard field sobriety tests, and the tests conducted on Rogers, are "the horizontal gaze nystagmus [(a test conducted with a pen held twelve to fifteen inches from the face of the person to be tested moving the pen slowly back and forth all the while the tester looks for equal tracking with both eyes and equal size pupils)], the one leg stand, and the walk and turn." (Tr. p. 31). Rogers failed all three tests.

Officer Brunner then told Rogers he had probable cause to believe he was intoxicated and asked him to submit to a chemical test. Officer Brunner also advised Rogers that refusing to take the chemical test would result in the suspension of driving privileges for one year. Rogers refused, twice at the scene. Officer Brunner placed Rogers under arrest and transported him to the jail. At the jail, Officer Brunner offered Rogers the opportunity to take the chemical test twice more. Rogers refused both additional offers.

On March 20, 2006, the State filed an Information charging Rogers with operating a vehicle while intoxicated endangering a person, a Class A misdemeanor, I.C. § 9-30-5-2(b). On July 25 and 26, 2006, a jury trial was held. After all the evidence was presented the jury found Rogers guilty as charged. On July 26, 2006, the trial court sentenced Rogers to one year in jail with three hundred thirty-five days suspended to probation.

Rogers now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Rogers argues there was insufficient evidence to sustain his operating a vehicle while intoxicated conviction. Specifically, he contends the State failed to present sufficient evidence that beyond a reasonable doubt established Rogers was intoxicated.

Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. *White v. State*, 846 N.E.2d 1026, 1030 (Ind. Ct. App. 2006), *trans. denied*. We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Id.* The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Id.* A judgment based on circumstantial evidence will be sustained if the circumstantial evidence alone supports a reasonable inference of guilt. *Id.*

In order to sustain a conviction under I.C. § 9-30-5-2(b), the State must prove beyond a reasonable doubt that (1) the accused; (2) operated; (3) a vehicle; (4) while; (5) intoxicated; (6) endangering another person. *Flanangan v. State*, 832 N.E.2d 1139, 1141 (Ind. Ct. App. 2005). The element of endangerment is proved by evidence that the defendant's condition or manner of operating the vehicle could have endangered any person, including the public, the police, or the defendant. *Weaver v. State*, 702 N.E.2d 750, 753 (Ind. Ct. App. 1998). Thus, "proof that the defendant's condition rendered

operation of the vehicle unsafe is sufficient to establish endangerment." *Id.* (quoting *Kremer v. State*, 643 N.E.2d 357, 360 (Ind. Ct. App. 1994), *reh'g denied*).

In *Luckhart v. State*, 780 N.E.2d 1165, 1167 (Ind. Ct. App. 2003), the defendant "smelled of alcohol, had bloodshot eyes and slurred speech, and was having difficulty balancing himself." Such evidence may establish a person's intoxication. *See id.* In the instant case, as evidenced in the record, Roger's intoxication was sufficient to support his conviction. Rogers was driving the vehicle when Officer Brunner pulled him over for speeding and twice weaving out of his lane. He smelled of alcohol, had red eyes and slurred speech, and had difficulty balancing himself. Rogers also failed all three field sobriety tests conducted by Officer Brunner. Plus, Rogers admitted to Officer Brunner he had been drinking. On appeal Rogers provides alternate explanations for each aspect of his behavior other than intoxication. Essentially, Rogers is asking us to reweigh the evidence. We decline the invitation and find the evidence presented is sufficient to sustain his conviction.

CONCLUSION

Based on the foregoing, we find there was sufficient evidence to sustain Rogers' conviction.

Affirmed.

NAJAM, J., and BARNES, J., concur.